

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

FRIDAY, THE 7TH SEPTEMBER 2007 / 16TH BHADRA 1929

Crl.Rev.Pet.No. 797 of 2000()

**CRA.65/1998 of ADDL. SESSIONS COURT, ALAPPUZHA
CC.118/1996 of JDUL.MAGISTRATE OF FIRST CLASS, RAMANKARI**
.....

REVN. PETITIONER: APPELLANT/ ACCUSED

**SOMAN, S/O. KUNJAN PAPPAN,
VELIKETIL, MAMPUZHAKARY,
RAMANKARY.**

**BY ADV. SRI.ALAN PAPALI
SRI.M.P.PRABHANANDAN**

RESPONDENT/ RESPONDENT/ COMPLAINANT

**STATE OF KERALA, (THE EXCISE INSPECTOR
KUTTANAD RANGE), REP.BY
THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**

BY PUBLIC PROSECUTOR SRI.C.K.SURESH

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 07/09/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

tss

CRL.RP. 797/2000

ORDER ON CRL.MP.4246/2000 IN CRL.RP.797/2000

DISMISSED

07.09.2007

SD/- K.R.UDAYABHANU, JUDGE

/TRUE COPY/

P.A. TO JUDGE

tss

K.R.UDAYABHANU, J

Crl.R.P.No.797 of 2000

Dated this the 7th day of September, 2007

O R D E R

The revision petitioner stands convicted for the offence under Section 55(a) of the Abkari Act and sentenced to undergo R.I. for six months and to pay a fine of Rs.1,000/- and in default, to undergo simple imprisonment for three months.

2. The prosecution case is that on 14.12.1995, at 12.30 p.m. the accused was found carrying two litres of illicit arrack in a plastic container at the western bank of Purathirupathil Padasekharam.

3. The evidence adduced in the matter consisted of the testimony of PWs' 1 to 5, Exts. P1 to P4 and MO1. PWs'1 and 3 independent witnesses did not support the prosecution case. It is based on the version of PWs' 4 and 5, the Excise Guard and Preventive officer, who were in the detecting squad that the courts below have convicted the accused.

4. The point raised before this court is that there is inordinate delay in producing the contraband before the court. It

is seen that the contraband was produced before the court below on 12.3.1996. There is a delay of clear three months. No explanation is forthcoming with respect to the above delay. There is no evidence to the effect that the contraband was kept till then in safe custody. Moreover, it is pointed out that there is nothing in Ext. P1 seizure mahazar that the sample was taken at the spot. Further, when the sample was taken, it is not also evident as per Ext. P1 that the entire container was sealed and taken into custody. Although, the above points were raised before the court below, the court has not answered the above lapses but relied on the version of PWs' 4 and 5 to enter upon a conviction of the accused. I find that non-production of the contraband before the court below for three months and the absence of evidence as to when the sampling was done are factors that enable the accused to claim the benefit of doubt. In the circumstances, I find that the accused is entitled for acquittal. The conviction is set aside and the accused is acquitted.

The revision petition is allowed.

CRRP797/2000

Page numbers

**K.R.UDAYABHANU,
JUDGE**

csl